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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF WASHINGTON

ANDREW MARSHALL and all other  
similarly situated,

Plaintiff,

v.

BONDED ADJUSTMENT  
COMPANY, a Washington  
Corporation, and SPOKANE  
EMERGENCY PHYSICIANS, P.S., a  
Washington Corporation,

Defendants.

Case No.: CV-11-022-RMP

COMPLAINT

CLASS ACTION

[FDCPA]

1 Plaintiff Andrew Marshall, suing on his own behalf and on behalf of all  
2 other similarly situated, through his attorneys, Michael D. Kinkley and Scott M.  
3 Kinkley of *Michael D. Kinkley, P.S.* and Kirk D. Miller of *Kirk D. Miller, P.S.*,  
4 alleges the following:  
5

6 I. COMPLAINT  
7

8 1.1. This is an action for damages and remedies against Bonded Adjustment  
9 Company (hereinafter “Bonded”) pursuant to the Fair Debt Collection  
10 Practices Act, 15 U.S.C. §1692, et seq., (“FDCPA”); for damages and  
11 remedies pursuant to the Washington State Consumer Protection Act  
12 (RCW 19.86 et seq.) (“WCPA”); and for damages and remedies pursuant  
13 to the State of Washington Collection Agency Act, RCW 19.16,  
14 (“WCAA”);  
15

16 1.2. For damages and remedies against Spokane Emergency Physicians  
17 (hereinafter “SEP”) pursuant to the Washington State Consumer  
18 Protection Act (RCW 19.86 et seq.) and the Washington State Industrial  
19 Insurance Act (RCW 55, et seq.)  
20  
21

22 II. JURISDICTION & VENUE

23 2.1. Jurisdiction of this Court arises under 15 U.S.C. §1692k (d), 28 U.S.C.  
24 §1337, and 28 U.S.C. §1331. Supplemental jurisdiction exists for state  
25

1 law claims pursuant to 28 U.S.C. §1367. Declaratory relief is available  
2 pursuant to 28 U.S.C. §2201 and §2202.

- 3  
4 2.2. Venue is proper in this District under 28 U.S.C. §1391(b) because the  
5 Defendants conduct affairs and transact business in this District, the  
6 unlawful acts giving rise to this Complaint occurred in this District, and  
7 the Plaintiff resides within the territorial jurisdiction of the court.  
8

9 III. FEDERAL QUESTION  
10 SUBJECT MATTER JURISDICTION

- 11 3.1. Plaintiff Andrew Marshall is a “consumer” as defined by the FDCPA 15  
12 U.S.C. § 1692a(3).

- 13 3.2. Plaintiff Andrew Marshall is a natural person.  
14

- 15 3.3. Plaintiff Andrew Marshall was alleged by the Defendants to be obligated  
16 to pay a debt.

- 17 3.4. Defendant Bonded attempted to collect a “debt” from as defined by  
18 FDCPA 15 U.S.C. §1692a(5).  
19

- 20 3.5. The alleged debt of Andrew Marshall was an alleged obligation of  
21 Plaintiff to pay money arising out of a transaction primarily for personal,  
22 family, or household purposes.  
23

- 24 3.6. Defendant Bonded is a “debt collector” as defined by the FDCPA 15  
25 U.S.C. §1692a(6).

1 3.7. Defendant Bonded is a “collection agency” as defined by RCW  
2 19.16.100(2)

3  
4 3.8. The principle purpose of Defendant Bonded’s business is the collection  
5 of debts.

6 3.9. Defendant Bonded regularly collects or attempts to collect, directly or  
7 indirectly, debts owed or due or asserted to be owed or due another using  
8 the telephone and mail.  
9

10 IV. PARTIES

11 4.1. Now, and at all relevant times, Plaintiff Andrew Marshall was a resident  
12 of the State of Washington residing within the territorial jurisdiction area  
13 of the United States District Court for the Eastern District of Washington.

14 4.2. Defendant Bonded is a Washington corporation engaged in the business  
15 of collecting debts in the state of Washington, which debts were  
16 originally owed to another.  
17

18 4.3. Defendant SEP is a Washington corporation engaged in the business of  
19 providing medical services for profit with its principle place of business  
20 in Spokane County, Washington.  
21  
22  
23  
24  
25

V. FACTS

5.1. At all times relevant to this action, Plaintiff Andrew Marshall was an employee of the City of Spokane.

5.2. On June 19, 2008 while performing his job duties for the City of Spokane, Plaintiff Marshall sustained a minor injury to his eye.

5.3. City of Spokane employees are covered by the City of Spokane's self-insured insurance program for injuries sustained in the course and scope of the city employee's job duties.

5.4. By treating a City of Spokane employee for an injury sustained in the course and scope of the employee's job duties, medical providers agree to accept the rules, regulations, and fee schedule for Washington State self-insured insurance plans.

5.5. After sustaining the injury to his eye, Plaintiff Marshall's supervisor drove him to Sacred Heart Medical Center in Spokane, Washington for treatment of his injury.

5.6. On the date he was injured and prior to treatment, Mr. Marshall disclosed to Sacred Heart Medical Center that he was an employee of the City of Spokane and that his injury was sustained while performing his job duties.

1 5.7. Mr. Marshall was treated at Sacred Heart Medical Center and released  
2 the same day.

3  
4 5.8. Following Sacred Heart Medical Center's treatment of Mr. Marshall's  
5 injury, SEP sent a bill for Mr. Marshall's injury treatment to the City of  
6 Spokane.

7  
8 5.9. Spokane Emergency Physicians failed to provide the required  
9 documentation with its initial claim to the City of Spokane for treating  
10 Mr. Marshall's injury.

11  
12 5.10. On November 18, 2008, the City of Spokane denied SEP's claim for  
13 reimbursement, pending additional documentation from SEP.

14  
15 5.11. After receiving communication from the City of Spokane stating that  
16 additional documentation would be required before the City of Spokane  
17 would reimburse SEP for Mr. Marshall's treatment, SEP sent a bill to  
18 Mr. Marshall, demanding payment from Mr. Marshall directly.

19  
20 5.12. WAC 296-20-020 states in part: "[A] worker shall not be billed for  
21 treatment rendered for his accepted industrial injury..."

22 5.13. At the time SEP billed Mr. Marshall for treatment stemming from his on-  
23 the-job injury, SEP knew that Mr. Marshall's injury was sustained while  
24 he was working for the City of Spokane.  
25

1 5.14. At the time SEP billed Mr. Marshall for treatment stemming from his on-  
2 the-job injury, SEP knew or should have known that WAC 296-20-020  
3 prohibited SEP from billing Mr. Marshall directly for his injury.  
4

5 5.15. By billing Mr. Marshall directly for medical treatment related to his on-  
6 the-job injury, SEP violated WAC 296-20-020.  
7

8 5.16. When SEP did not receive payment from Mr. Marshall, SEP referred the  
9 bill for Mr. Marshall's treatment to Bonded for collection from Mr.  
10 Marshall.  
11

12 5.17. Bonded did not inquire from SEP whether Mr. Marshall was a recipient  
13 of medical benefits under any self-insured or industrial insurance plan.  
14

15 5.18. Bonded did not inquire from SEP whether SEP was entitled to the  
16 amount billed to Mr. Marshall and the City of Spokane.  
17

18 5.19. Bonded did not inquire whether SEP had contracted or agreed to accept  
19 an amount less than the amount billed by SEP to the City of Spokane and  
20 Mr. Marshall.  
21

22 5.20. At no time did Bonded utilize policies or procedures to prevent collection  
23 or attempts to collect money from Washington residents who are covered  
24 by a Washington self-insured or industrial insurance plan.  
25

5.21. At no time did Bonded utilize policies or procedures to prevent collection  
or attempts to collect more than the amount allowed from Washington

1 residents who are covered by a Washington self-insured or industrial  
2 insurance plan.

3  
4 5.22. Bonded sent dunning letters via U.S. mail to Mr. Marshall, in an attempt  
5 to collect a debt on behalf of SEP. The dunning letters to Mr. Marshall  
6 were “communications”, as defined by 15 USC § 1692a.

7  
8 5.23. Bonded attempted to contact Mr. Marshall by telephone in an attempt to  
9 collect a debt on behalf of SEP. The telephone calls to Mr. Marshall  
10 were “communications”, as defined by 15 USC 1692a.

11  
12 5.24. Bonded filed a lawsuit against Mr. Marshall in Spokane County District  
13 Court (cause number 29109708) in an attempt to collect the debt on  
14 behalf of SEP.

15  
16 5.25. On January 19, 2010, Mr. Marshall was served with a copy of the  
17 Summons and Complaint filed by Bonded.

18  
19 5.26. In every communication by Bonded to Mr. Marshall, including the  
20 lawsuit filed against Mr. Marshall, the Defendants attempted to collect  
21 more money for the services provided to Mr. Marshall by SEP than was  
22 allowed under the City of Spokane self-insured plan.

23  
24 5.27. By treating Mr. Marshall, the Defendants implicitly agreed to accept the  
25 amount allowed under the City of Spokane self-insured plan, according  
to the Washington State fee schedule.



1 5.28. On January 22, 2010, a letter was sent to Bonded by the City of Spokane,  
2 stating in part that “if Spokane Emergency Physicians would bill us  
3 directly with the appropriate CPT codes, we would gladly process the bill  
4 for payment.”  
5

6 5.29. After Bonded received the January 22, 2010 letter from the City of  
7 Spokane, Bonded refused to dismiss its lawsuit against Mr. Marshall.  
8

9 5.30. In February, 2010, the City of Spokane received proper documentation of  
10 the claim from SEP.

11 5.31. On February 12, 2010, the City of Spokane paid SEP in full, pursuant to  
12 the amount SEP was due under the Washington State self-insured plan  
13 and Washington State fee guidelines for the services rendered.  
14

15 5.32. SEP billed the City of Spokane more than the amount allowed by the  
16 Washington State self-insured plan reimbursement guidelines.  
17

18 5.33. The amount paid to SEP by the City of Spokane for treatment of Mr.  
19 Marshall’s injury was less than the amount Bonded attempted to collect  
20 from Mr. Marshall.  
21

22 5.34. Bonded attempted to collect from Mr. Marshall more than the amount  
23 allowed by the Washington State self-insured plan reimbursement  
24 guidelines.  
25

1 5.35. Bonded was notified by SEP in February 2010 that SEP had been paid in  
2 full for services provided to Mr. Marshall by SEP.

3  
4 5.36. Despite being informed by SEP that SEP had been paid in full for  
5 services rendered to Mr. Marshall, Bonded continued to attempt to  
6 collect the full amount of the claim from Mr. Marshall.

7  
8 5.37. After SEP informed Bonded that it had been paid in full for services  
9 rendered to Mr. Marshall, and before Mr. Marshall filed his motion to  
10 dismiss, Bonded refused to dismiss its lawsuit against Mr. Marshall.

11  
12 5.38. On April 5, 2010, Bonded sent correspondence to Mr. Marshall's  
13 attorney, stating that despite the City of Spokane's payment to SEP, Mr.  
14 Marshall still owed Bonded Two Hundred One Dollars and Two Cents  
15 (\$201.02).

16  
17 5.39. Bonded did not amend its Complaint to reflect that SEP had been paid  
18 any amount as reimbursement for services provided to Mr. Marshall by  
19 SEP.

20  
21 5.40. In May 2010, approximately three (3) months after SEP had been paid in  
22 full by the City of Spokane, Mr. Marshall, through his attorney moved  
23 the Spokane County District Court for an Order of Dismissal of  
24 Bonded's claim against him.  
25

1 5.41. The Spokane County District Court dismissed Bonded's claim against  
2 Mr. Marshall on May 21, 2010 with prejudice, pursuant to WAC 296-20-  
3 020.  
4

5 VI. CLASS ALLEGATIONS

6 6.1 This action is brought on behalf of a class consisting of:

7 6.1.1 All residents of the State of Washington;

8 6.1.2 Who are covered by the Washington State Industrial Insurance  
9 Act (RCW 51, et seq.);  
10

11 6.1.3 Who sustained an injury covered by Washington Industrial  
12 Insurance or a self-insured insurance plan;  
13

14 6.1.4 And to whom SEP or Bonded sent a bill or attempted to collect  
15 any amount of money related to the covered injury.  
16

17 6.2 This action is brought on behalf of a subclass consisting of:

18 6.2.1 All employees of the City of Spokane;

19 6.2.2 Against whom Defendants sent a bill, dunning letter, filed a  
20 lawsuit, or otherwise collected or attempted to collect any amount of  
21 money;  
22

23 6.2.3 That was based on medical treatment provided to a City of  
24 Spokane employee.  
25

6.2.4 In violation of WAC 296-20-020.

1  
2 6.3 The class period for the FDCPA is one (1) year prior to the date of filing  
3 this action. The class period for the WCPA and WCAA is the four (4)  
4 year period prior to the date of the filing of this Complaint.  
5

6 6.4 The class is sufficiently numerous that joinder of all members is  
7 impractical.  
8

9 6.4.1 The City of Spokane has employed hundreds or thousands of  
10 individuals during the applicable class period;  
11

12 6.4.2 The illegal practice of attempting to collect from City of  
13 Spokane employees directly, in violation of WAC 296-20-020 is  
14 believed to be a common practice and a policy decision of SEP and  
15 Bonded.  
16

17 6.4.3 The practices of collecting and attempting to collect from City  
18 of Spokane employees by the Defendants are similar to those found  
19 previously to be improper by the Spokane County District Court.  
20

21 6.5 There are questions of law and fact common to the class, which questions  
22 predominate over any questions peculiar to individual class members.  
23

24 6.6 The principal issues include whether Bonded violated the FDCPA,  
25 WCAA, and the WCPA by:

1           6.6.1     Using false representations or deceptive means to collect or  
2                   attempt to collect a debt;

3           6.6.2     Using unfair or unconscionable means to collect or attempt to  
4                   collect a debt;

5           6.6.3     Threatening and/or taking action that could not legally be taken;

6           6.7     And whether SEP violated the Washington Consumer Protection Act  
7                   (WCPA) by:  
8

9           6.7.1     Using false representations or deceptive means to collect or  
10                   attempt to collect a debt;

11           6.7.2     Using unfair or unconscionable means to collect or attempt to  
12                   collect a debt;

13           6.7.3     Threatening and/or taking action that could not legally be taken;

14           6.8     There are no individual questions, other than issues which can be  
15                   determined by a ministerial inspection of Defendants' records. There are  
16                   no individual questions peculiar to individual class members.  
17

18           6.9     Plaintiff has the same claims as the members of the class. All of the  
19                   claims are based on the same factual and legal theories.  
20

21           6.10    Plaintiff will fairly and adequately represent the interest of the class  
22                   members. He is committed to vigorously litigating this matter. Plaintiff  
23  
24  
25

1 has retained counsel experienced in prosecuting class actions and claims  
2 involving unlawful collection matters. Neither the Plaintiff nor his  
3 counsel have any interests which might cause them not to vigorously  
4 pursue this claim.  
5

6 6.11 A class action is a superior method for the fair and efficient adjudication  
7 of this controversy.  
8

9 6.12 Class wide damages are essential to induce Defendants to comply with  
10 the law.  
11

12 6.13 The interest of the class members in individually controlling the  
13 presentation of separate claims against the Defendants is small because  
14 the maximum statutory damages in an individual FDCPA action are  
15 \$1,000.00.  
16

17 6.14 Certification of a class pursuant to Rule 23(b)(3) of the Federal Rules of  
18 Civil Procedure is appropriate. A class action is the only appropriate  
19 means of resolving this controversy because the class members are not  
20 aware of their rights. In the absence of a class action, a failure of justice  
21 will result.  
22

23 6.15 Certification of a class pursuant to Rule 23(b)(2) of the Federal Rules of  
24 Civil Procedure is also appropriate. Defendants have acted on grounds  
25

1 generally applicable to the class, thereby making appropriate declaratory  
2 relief with respect to the class as a whole.

3  
4  
5 X. VIOLATION OF THE FAIR DEBT  
6 COLLECTION PRACTICES ACT

- 7 7.1 The debt collector Defendant Bonded, through its own acts, by and  
8 through their agents and employees, and their policies and procedures,  
9 have violated the FDCPA which has caused damage to Plaintiff.  
10  
11 7.2 Bonded falsely represented the character, amount, and/or legal status of  
12 the alleged debt, violating 15 USC § 1692e, 15 USC § 1692e(2)(A), and  
13 other provisions of the FDCPA.  
14  
15 7.3 Bonded made misleading and deceptive statements in the collection of a  
16 debt in violation of 15 USC § 1692e.  
17  
18 7.4 Bonded has threatened to take action that cannot legally be taken,  
19 violating 15 USC § 1692e, 15 USC § 1692e(5) and other provisions of  
20 the FDCPA.  
21  
22 7.5 Bonded made misleading and deceptive statements in the collection of a  
23 debt in violation of 15 USC § 1692e.  
24  
25 7.6 Bonded misrepresented the amount due and that any amount was due  
from the Plaintiff.

1 7.7 Bonded misrepresented the amount due for interest and the amount due  
2 for principal.

3  
4 7.8 Bonded used unfair or unconscionable means to collect or attempt to  
5 collect a debt in violation of 15 USC § 1692f including but not limited to  
6 15 USC § 1692f(1).

7  
8 7.9 The attempt to collect or collection of such an amount is neither  
9 expressly authorized by an agreement creating the debt nor permitted by  
10 law, therefore in violation of 15 USC § 1692f, 15 USC § 1692f(1), and  
11 other provisions of the FDCPA.

12  
13 7.10 The Defendants' violation of the FDCPA has caused actual damages to  
14 the Plaintiff.

15  
16  
17 XIII. VIOLATION OF THE WASHINGTON  
18 COLLECTION AGENCY ACT

19 8.1 Defendant Bonded is a "collection agency" as defined by RCW  
20 19.16.100(2).

21 8.1.1 Defendant Bonded is in violation of RCW 19.16 et seq.

22 8.1.2 In particular, Bonded violated RCW 19.16.250(c) that states

23 "If the notice, letter, message, or form is the first notice to the debtor  
24  
25 or if the licensee is attempting to collect a different amount than



1 indicated in his or its first notice to the debtor, an itemization of the  
2 claim asserted must be made including:

3  
4 8.1.2.1 (i) Amount owing on the original obligation at the time it  
5 was received by the licensee for collection or by assignment;

6 8.1.2.2 (ii) Interest or service charge, collection costs, or late  
7 payment charges, if any, added to the original obligation by the  
8 original creditor, customer or assignor before it was received by  
9 the licensee for collection, if such information is known by the  
10 licensee or employee: PROVIDED, That upon written request of  
11 the debtor, the licensee shall make a reasonable effort to obtain  
12 information on such items and provide this information to the  
13 debtor;  
14  
15

16 8.1.2.3 (iii) Interest or service charge, if any, added by the  
17 licensee or customer or assignor after the obligation was received  
18 by the licensee for collection;  
19

20 8.1.2.4 (iv) Collection costs, if any, that the licensee is  
21 attempting to collect;  
22

23 8.1.2.5 (v) Attorneys' fees, if any, that the licensee is attempting  
24 to collect on his or its behalf or on the behalf of a customer or  
25 assignor;

1           8.1.2.6       (vi) Any other charge or fee that the licensee is  
2                   attempting to collect on his or its own behalf or on the behalf of a  
3                   customer or assignor.  
4

5       8.2    Defendant Bonded violated RCW 19.16.250(14)(15) and (18) by  
6           misrepresenting the amount due and attempting to collect amounts in  
7           excess of that allowed by law.  
8

9  
10                               IX. VIOLATION OF THE  
11                               CONSUMER PROTECTION ACT

12   9.1    Defendants SEP and Bonded each violated RCW 19.86, et seq. the  
13           Washington Consumer Protection Act (WCPA).  
14

15   9.2    Defendant Bonded's violation of the Washington State Collection  
16           Agency Act is a per se violation of the Washington State Consumer  
17           Protection Act (RCW 19.16.440).  
18

19   9.3    Defendant Bonded's violation of the Washington State Collection  
20           Agency Act (WCAA) prohibited practices section, RCW 19.16.250 is an  
21           unfair act or practice and/or an unfair method of competition in the  
22           conduct of trade or commerce.  
23

24   9.4    Defendants Bonded's violation of the Washington State Collection  
25           Agency Act (WCAA) prohibited practices section, RCW 19.16. affects

1 the public interest in violation of the Washington State Consumer  
2 Protection Act. (RCW 19.16.440).

3  
4 9.5 Defendant Bonded has violated the WCAA including but not limited to  
5 the prohibited practices section (RCW 19.16.250).

6 9.6 Defendant Bonded has violated the Washington Administrative Code  
7 governing the actions of collection agencies.

8  
9 9.7 The business of collection agencies, as well as all acts and practices of  
10 collection agencies, debt collectors, are subject to the Consumer  
11 Protection Act, RCW 19.86 and subsequent sections.

12  
13 9.8 The Consumer Protection Act of the State of Washington requires that all  
14 collection agencies, their agents, and debt collectors abstain from unfair  
15 or deceptive practices or acts and unfair methods of competition.

16  
17 9.9 The Consumer Protection Act of the State of Washington requires that all  
18 businesses operating in the State of Washington abstain from unfair or  
19 deceptive practices or acts and unfair methods of competition.

20  
21 9.10 By attempting to collect money from the Plaintiff that he did not owe, in  
22 violation of WAC 296-20-020, Defendants SEP and Bonded,  
23 individually and/or by and through their agents and employees, policies  
24 and procedures, have engaged in deceptive acts and practices, unfair acts  
25

1 and practices, and unfair methods of competition that have caused injury  
2 to the Plaintiff.

3  
4 9.11 Defendants SEP and Bonded are in businesses that involve trade or  
5 commerce.

6 9.12 Defendants SEP's and Bonded's unlawful and unfair attempts to collect  
7 money from Washington consumers are against public interest.

8  
9 9.13 Defendants SEP's and Bonded's actions were the direct cause of injury  
10 to Plaintiff's property including but not limited to postage fees, mileage,  
11 costs in defending the Spokane County District Court action that was  
12 wrongfully filed against him.

13  
14 9.14 SEP's and Bonded's violations have harmed and unless enjoined will  
15 continue to harm the public interest by causing Washington residents to  
16 incur charges that are unfair deceptive, unlawful, and an unfair method of  
17 competition.  
18

19 X. DEMAND

20 WHEREFORE, Plaintiff demands judgment as follows:  
21

22 10.1 Actual damages;

23 10.2 Statutory damages pursuant to the FDCPA, 15 U.S.C. § 1692k(a)(2).

24 10.3 Statutory damages pursuant to the FDCPA 15 U.S.C. § 1692k(a)(2)(B)  
25

1 10.4 Costs and reasonable attorney's fees pursuant to the FDCPA, 15 U.S.C.  
2 §1692k(a)(3);

3  
4 10.5 Costs and reasonable attorney's fees pursuant to the Washington  
5 Consumer Protection Act, RCW 19.86;

6 10.6 Treble damages pursuant to the Washington Consumer Protection Act,  
7 RCW 19.86;

8  
9 10.7 Declaratory Judgment that Bonded's practices violate the Fair Debt  
10 Collection Practices Act; the Washington Consumer Protection Act;  
11 and/or the Washington Collection Agency Act.

12  
13 10.8 Disgorgement pursuant to RCW 19.16.450 of all interest, service  
14 charges, attorney's fees, collection costs, delinquency charge or any other  
15 fees or charges otherwise legally chargeable to the debtor on such claim,  
16 wrongfully collected by Defendants or any of them;

17  
18 10.9 Injunction preventing the Defendants SEP and Bonded from wrongfully  
19 billing and collecting or attempting to collect debts from City of Spokane  
20 employees incurred for medical expenses related to on-the-job injuries.

21  
22 10.10 For such other and further relief as may be just and proper.

23  
24 DATED this 18<sup>th</sup> day of January, 2011.  
25

*Kirk D. Miller, P.S. .*

/s/ Kirk D. Miller  
Kirk D. Miller  
WSBA # 40025  
Attorney for Plaintiff